BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2018-318-E

In the Matter of:	)	
	)	**RESPONSE OF**
Application of Duke Energy Progress, LLC for Adjustments in Electric Rate Schedules and Tariffs and Request for an Accounting Order	)))))	**DUKE ENERGY PROGRESS, LLC TO PETITIONS OF THE OFFICE OF REGULATORY STAFF AND THE SOUTH CAROLINA ENERGY USERS COMMITTEE**

Pursuant to S.C. Code Ann. §58-27-2150, the Rules of Practice and Procedure of the South Carolina Public Service Commission ("Commission") and Order No. 2019-71H, Duke Energy Progress, LLC ("DE Progress") submits the following consolidated response to the petition for clarification and reconsideration filed by the Office of Regulatory Staff ("ORS") (the "ORS Petition") and the petition for rehearing or reconsideration filed by the South Carolina Energy Users Committee ("SCEUC") (the "SCEUC Petition").

I. ORS PETITION FOR RECONSIDERATION AND CLARIFICATION

The ORS Petition seeks reconsideration of Order No. 2019-341 regarding the sufficiency of the notice that DE Progress provided in this proceeding and separately seeks clarification of a number of issues. This response will provide proposed findings of fact and conclusions of law explaining why the ORS position on the notice issue should be rejected. The response will also provide responses from DE Progress on certain items of clarification requested by the ORS.

A. <u>ORS Request for Reconsideration – Notice Issue.</u>

Findings of Fact (Notice Issue)

1. DE Progress filed its application in this proceeding on November 8, 2018. On November 28, 2018, the Clerk's office provided the Company with a notice for the filing and required that the notice be published in newspapers of general circulation by December 6, 2018 and that the notice be provided directly to all DE Progress customers by bill inserts by January 11, 2019.

2. On December 27, 2018, the Company filed affidavits showing that the notice provided by the Clerk's office had been published in newspapers in Hartsville, Florence, Marion, Dillon, Kingstree, Bennettsville, Chesterfield, Darlington, Columbia and Sumter. On January 31, 2019, DE Progress filed an affidavit attesting to its compliance with the requirement that the notice be provided directly to all customers.

3. The notice prepared by the Clerk's office and delivered to customers directly and by publication provided an overview of the relief requested in the Company's application including the fact that the Company was seeking an overall increase of 10.3% in rates amounting to an additional $59 million in annual revenues. The notice provided an estimate that a typical residential customer using 1000 kilowatt hours of electricity per month would see an increase of approximately $17.91 per month. The notice provided specific information about the proposal of DE Progress to increase its monthly fixed charge, known as the Basic Facilities Charge ("BFC"), from $9.06 to $29.00 per month, but it did not provide any information about the volumetric component of any proposed rate.

4. The Commission's Document Management System ("DMS") shows that, following the publication of the notice, 13 parties intervened, including advocacy groups like the South Carolina NAACP, Upstate Forever, the Sierra Club, the South Carolina Coastal Conservation League and the South Carolina Energy Users Committee. The DMS also shows that 341 people submitted letters to the Commission responding to the notice.

5. This Commission scheduled and held two night hearings in this proceeding in Florence on April 1, 2019 and Sumter on April 2, 2019. Prior to those night hearings, notice to customers was provided by: (1) publication in newspapers in Hartsville, Florence, Marion, Dillon, Kingstree, Bennettsville, Chesterfield, Darlington, Columbia and Sumter; (2) posting on the Company's website; and (3) directly by the Company to its customers through the use of its automatic telephone dialing system.

6. In response to the notice, hundreds of customers attended the two night hearings. Dozens of the people who attended also spoke to directly express their views on the Company's application. The most frequent subject of the testimony from customers at the night hearings was the proposed increase in the BFC. Customers who testified repeatedly stated their opposition to the BFC. The customer testimony on the subject showed they understood that there was an inverse relationship between the BFC and the volumetric component of the Company's rates. In fact, many customers expressed concern because they felt that the lower volumetric rates that would offset the increased BFC would reduce the value of their solar panels. Other customers expressed their opposition to the restructured rates because they felt it would undercut and devalue their efforts to save money by minimizing their energy use.

7. Following the night hearings, DE Progress wrote this Commission to state that it would accept the BFC charges proposed by ORS witness Seaman-Huynh of $11.78 for

residential customers; $12.34 for Small General Service customers; and $11.31 for Small General Service Constant Load customers. That letter requested that the remaining revenue requirement ultimately determined by the Commission be recovered in the variable component of such rates. The ORS responded to the DE Progress acceptance of the ORS proposed BFC charges by raising for the first time the possibility that it would object to the volumetric component of any rate being higher than the level of that component as shown in attachments to the Company's application.

8. The total rate of the Company includes a variable component and a basic facility charge fixed component and other charges, depending upon the actual tariff (some tariffs contain demand components). What is required to be noticed is the rate – the tariff—and there is no requirement to notice individual subcomponents of rates. Based on the decision of this Commission in Order No. 2019-341, the increase in the monthly bill of an average residential customer using 1,000 kilowatt hours of electricity per month is approximately $8.06. This figure is well below the figure of $17.91 that was provided in the notice required to be provided by this Commission.

Conclusions of Law (Notice Issue)

1. Article I, Section 22 of the South Carolina Constitution imposes due process requirements on actions of South Carolina administrative agencies: "[n]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard…" The South Carolina Supreme Court has held that this provision guarantees persons the right to notice and an opportunity to be heard by administrative agencies. *Ross v. Medical University of South Carolina*, 328 S.C. 51, 492 S.E.2d 62 (1997).

2. The leading case on what notice is required to afford due process is *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), which approved of notice by publication in certain circumstances. The court in *Mullane* described the notice requirement of the due process clause as follows:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

Mullane, *supra*, p. 314.

3. The South Carolina Supreme Court has held that substantial prejudice must be shown to establish a due process claim. *Tall Tower, Inc. v. South Carolina Procurement Panel*, 294 S.C. 225, 363 S.E.2d 683 (1987). The Court has also made it clear that due process is flexible and calls for such procedural protections as the particular situation requires. *Kurschner v. City of Camden Planning Department*, 376 S.C. 165, 656 S.E.2d 346 (2008).

4. These authorities show that the notice provided of the DE Progress Application in this proceeding easily meets the due process requirements of S.C. Const., Art. 1, §22. The notice informed DE Progress customers that the Company was asking for an overall 10.3% rate increase amounting to an additional $59 million in annual revenues. The notice also provided an illustration showing that a residential customer, using 1,000 kWh would see an increase of approximately $17.91 per month. The notice described in detail the proposed increase in the BFC from $9.06 to $29.00.

5. The effectiveness of the notice required by the Commission in this proceeding is best illustrated by the response it generated. Twelve parties intervened, including influential advocacy groups like the South Carolina NAACP, Upstate Forever, the Sierra Club and the South Carolina Coastal Conservation League. Many of these groups participated in this proceeding in a

representative capacity advocating for customers. These groups brought substantial expertise to the proceeding and offered expert testimony on the issue of the proposed BFC. These experts clearly and unmistakably understood the inverse relationship between the reduction in the BFC they were advocating and an increase in the volumetric component of the Company's proposed rates. It is significant that none of these parties has joined the ORS in its concern about the purported problem with the notice provided in the proceeding.

6. As recited in the Findings of Fact above, no fewer than 341 people submitted letters of protest responding to the notice, demonstrating the effectiveness of the notice. Further proof that DE Progress customers had ample notice of the Company's proposal, and an opportunity to be heard on it, was shown by the night hearings held in Florence and Sumter attended by hundreds of customers, and where the Commission heard directly from such customers, primarily residential customers. It is also clear from the testimony of those witnesses that there was widespread understanding among those customers of the inverse relationship between the reduced BFC that they advocated for and a higher volumetric component of the DE Progress rates.

7. The large response to the notice in this proceeding shows the notice meets the constitutional due process requirements cited in the ORS Petition. It stands in stark contrast to the notice provision considered by the South Carolina Supreme Court in *Porter v. South Carolina Public Service Commission*, 338 S.C. 164, 525 S.E.2d 866 (2000).[1] In that case the court considered a notice given for "rate adjustments" that failed to disclose that the adjustments included increases in certain rates of as much as 104%. There, the court found the notice lacking: "Taken as a whole, this notice is not informative and in fact is somewhat misleading

[1] In the *Porter* case, the court considered whether the notice had complied with the provisions of S.C. Code Ann. §58-9-530, a provision that applies to telephone utilities but not electrical utilities.

since one could conclude the "proposed rate adjustments" merely refers to the reduction in toll switched access rates." *Porter*, *supra*, pp. 169-170. In contrast, the notice of the DE Progress rate adjustment required by the Commission in this proceeding cannot possibly be criticized for failing to inform customers of the potential increase in rates being proposed by DE Progress, and it is clear that DE Progress customers received notice "reasonably calculated" to provide them the opportunity to be heard as required by *Mullane* and related cases.

8. The Commission has a constitutional responsibility to set rates in this proceeding that provide DE Progress with an opportunity to earn a fair and reasonable rate of return on its property devoted to serving the public. *Southern Bell Tel. & Tel. Co., v. Public Service Commission*, 270 S.C. 590, 244 S.E.2d 278 (1978), citing *Bluefield Water Works v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). The primary concern of many of the customers who responded to their opportunity to be heard, by writing letters of protest or showing up to speak at night hearings, was the DE Progress proposed increase in the BFC. The DE Progress letter accepting the BFC rates set out in ORS testimony was, in part, a response to the views of customers who exercised their right to be heard. The position taken by the ORS in its petition for reconsideration - that due process notice requirements somehow limit the Commission's ability to respond to customer concerns by adjusting component elements of the DE Progress proposed charges – turns the relevant constitutional jurisprudence on its head and would lead to an absurd result. The *Tall Tower* case held that "substantial prejudice" must be shown to establish a due process claim. Contrary to the concern expressed by the ORS, substantial prejudice in this case would result from a ruling that this Commission could not respond to customer concerns about

the BFC by exercising its ratemaking jurisdiction to adjust other components of rates in order to allow the Company its constitutionally protected opportunity to earn a fair rate of return.

9. The Commission's ratemaking jurisdiction is broad, including not only the setting of a revenue requirement, but allocation of that revenue requirement between classes and to fix just and reasonable rates. *See*, *e.g.*, S.C. Code Ann. 58-27-840 and 58-27-310. Under the theory of ORS, in rate cases, where the Commission is exercising its ratemaking jurisdiction to establish just and reasonable rates, and to ensure those rates aren't unreasonably preferential to any customer class, the Commission would not be able to reallocate any revenue from one customer class to another that would go beyond what the Company proposed – an outcome that would be illogical and contrary to the Commission's grant of jurisdiction. Accordingly, ORS's interpretation of the notice requirement, if taken to its logical conclusion, would frustrate and bind the Commission's hands and contradict statutes *in pari materia* in violation of statutory construction principles.

10. The Commission holds that the notice provided by DE Progress in this proceeding met the requirements of Article I, Section 22 of the South Carolina Constitution.

B. ORS Requests for Clarification.

1. Rate Base and Net Income for Return.

The ORS Petition requests that the Commission clarify the approved rate base and net income for return for DEP. (ORS Petition at 3.) The Company included the values for these figures in its Compliance filing. Should the Commission wish to include these values in their reconsideration order, the amounts can be located on DEP Compliance Exhibit 1 (Directive) on page 1.

2. Cost of Service Study and Methodology.

The ORS Petition requests that the Commission confirm that the cost of service study ("COSS") presented by the Company is to be used to allocate all revenues, expenses and rate base items, and to design rates for all customer classes, unless otherwise specified by the Commission. The Company supports the ORS's request for confirmation. A preliminary step in ratemaking is to establish a COSS for cost allocation purposes between customer classes, while a subsequent step is to design rates influenced by that cost of service study. The Company believes the underlying COSS methodology used to allocate costs is appropriate for cost causation purposes is appropriate, as testified by ORS Michael Seaman-Huynh, even if the resulting rate design is ultimately adjusted for policy reasons, as has been done in this case.

3. Executive Compensation.

In the ORS Petition, ORS submits that the total downward adjustment for executive compensation should be ($392,000) (ORS Petition at 4-5.), which aligns with the Company's calculation for the total downward adjustment for executive compensation shown in DEP Compliance Exhibit 1 (Directive) at p. 3, line 29. The Company believes the small difference between the Company and the ORS is due to rounding differences. Both the Company and ORS calculations correctly remove 75% of the South Carolina allocable portion of Duke Energy Chief Executive Officer's compensation per the Commission Order and the Company and ORS values differ only due to rounding.

4. Non-Allowable Expenses (Adjustment #36).

ORS also seeks clarification from the Commission regarding the $178,000 of non-litigation, non-allowable expenses that remained in dispute following the oral stipulation on the record between DEP and the ORS (the "Non-allowables Stipulation"). (ORS Petition at 5.) The

$178,000 consists of $116,530 of Exceptional Contribution Awards, $45,559 of South Carolina Chambers of Commerce and other South Carolina community or economic development organizations, and $15,828 of Service Awards, as outline on page 80 of the Commission's Order.

Other than certain costs related to coal ash litigation costs and certain costs the Company agreed to remove such as lobbying costs and image building advertising expenses, in the DE Carolinas Order in Docket No. 2018-319-E, the Commission specifically allowed the Company to recover the remaining non-allowable costs in the same categories at issue in the DEP case in this docket. (Order at 30 ("The Commission finds the other expenses addressed in Adjustment #36 to be recoverable.").) Thus, the Company submits that it is reasonable and appropriate to consider those costs to be properly allowed in rates in this docket. In addition, as part of the Non-allowables Stipulation, the parties agreed to a generic docket where the Commission can revisit and provide guidance on the future recovery of these types of expenses.

5. Accounting Orders.

The ORS Petition seeks clarification on the treatment of the Company's requests accounting orders related to grid modernization, coal ash basin compliance costs, AMI and Customer Connect. (ORS Petition at 5-6.) The Company notes that no party contested or otherwise raised issue with the Company's deferral request for coal ash basin compliance costs.

In the present case, no party asserts that the incremental costs the Company is requesting to defer – which are not included in current rates – are in any way imprudent. Further, no party asserts that the incremental costs the Company is requesting to defer will somehow not be incurred or have been calculated incorrectly. DE Progress believes it is entirely appropriate to allow the Company to defer these incremental costs to give the opportunity to recover them at a later date in a subsequent rate case. Otherwise, the Company has no opportunity to recover prudently incurred costs for major investments. As noted in the Company's Proposed Order in this case, this Commission has long recognized the value of deferrals in mitigating rate increases and degradation to the Company's earnings. (DEP Proposed Order at 81-83). While some states might utilize regulatory mechanisms such as the use of forward test years, alternative ratemaking, or riders that would otherwise allow recovery of costs not included in rates, deferrals are a regulatory mechanism whereby the Company can defer rate cases and thus increases to customer rates to the benefit of customers by providing rate stability for longer durations between rate cases. The Commission has authorized deferral accounting for post-in-service costs of major generating plant additions from the date the units were placed in service to the date rates reflected the cost of the plants and costs related to abandoned plant. The Commission has also found value in and granted deferral accounting for significant O&M expenses such as those incurred to comply with regulations for nuclear and cyber-security requirements.

In addition, ORS submits that if the Commission grants the requested deferrals, the deferrals should be subject to the deferral treatment outlined in Section IV.K of the Order. (ORS Petition at 7). The Company objects to the ORS request regarding the accounting treatment for recovery of the deferred costs as premature. Per the Commission Order, the parties have agreed to an administrative proceeding on deferrals whereby the parties will have an opportunity to further address the proper accounting of deferrals and guidelines governing deferrals. The Company is only requesting permission to defer the costs at this time. Any recommendations concerning the accounting treatment for cost recovery of these deferred costs is premature at this juncture and should be addressed in a future rate proceeding in which the Company seeks to actually recover the costs in customer rates.

The Company's specific responses to the treatment of certain deferrals included in the ORS Petition are below. Additionally, the Company notes that most of the deferrals for which the ORS seeks clarification were never addressed in their proposed order filed in this proceeding.

(a) Grid Modernization deferral.

The ORS Petition seeks clarity on whether the Commission approved the Stipulation approved in Hearing Officer Directive 2019-26H whereby the parties agreed to a continuation of the Grid Modernization deferral. The Company submits that the Commission accepted the stipulation that governs the deferral and no additional clarification is needed.

(b) Coal ash deferral

The ORS petition seeks clarity from the Commission on the Company's request to continue the deferral of the Company's costs incurred in connection with complying with federal and state environmental remediation requirements related to closing coal ash basins and other ash storage units, and the amortization period for previously deferred costs. The Commission originally approved the Company's request to defer these costs in Docket No. 2016-196. (*See* Order No. 2016-490.) The ORS did not oppose the Company's request to continue to defer coal ash costs in this docket nor did the ORS contest the Company's underlying request in 2016 to establish the deferral.[2] Further, the Commission has acknowledged in general the distinction between deferral of ash compliance costs between rate cases versus requesting an ongoing level of these costs to be included in rates. (Order 2019-323 at 42.)

[2] The North Carolina Utilities Commission approved the Company's request to defer ongoing coal ash related costs with a return until the Company's next rate case in North Carolina. *See Order Accepting Stipulation, Deciding Contested Issues and Requiring Revenue Reduction*, NCUC Docket No. E-2, Sub 1142, at 227 (February 2018).

The Company needs to maintain the deferral treatment previously approved by the Commission and requested to continue to allow parties to examine ongoing costs for future recovery and to ensure the Company maintains its ability to recover prudently incurred costs.

The accounting treatment requested by the Company for its coal ash costs is critical. Absent the deferral, the Company's credit metrics will significantly weaken as calculated by Moody's and S&P. Both of these credit rating agencies published credit opinions in 2018 that describe how recovery of deferred coal ash costs is important to the Company in maintaining its financial strength. (Tr. Vol. 5-2, p. 946-46.) If the Commission was to reverse its previous position on coal ash deferral accounting treatment, it would result in the write off of hundreds of millions of dollars of costs for accounting purposes and increase the likelihood of credit rating downgrades, both of which would impair the Company's financial stability and materially increase the Company's cost of capital. This deferral will allow the Company to bridge the timing gap until the Company's next rate case while continuing to comply with federal and state regulatory requirements. The Company believes this request is consistent with the case law and policy in this State of allowing unique regulatory treatment for environmental compliance costs.[3] For these reasons, the Commission should approve the continued deferral accounting treatment for these costs until they can be sought for recovery and considered by the Commission in the next rate proceeding.

[3] *In re: Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC for an Accounting Order to Defer Certain Coal Ash Remediation Costs*, Docket No. 2016-196-E, Order No. 2016-490, p. 1 (approving a regulatory asset account for costs incurred in connection with complying with federal and state environmental remediation requirements related to closing coal ash basis and other ash storage units); *In re: Petition of SCE&G for Increases and Adjustments in Electric Rate Schedules and for Mid-period Reduction in Base Rates for Fuel*, Docket No. 2012-218-E, Order No. 2012-951, p. 34-35 (creation of Environmental Remediation Accrual Account to recover remediation costs associated with substation sites and disposal sites of obsolete electric distribution equipment.).

(c) AMI deferral.

The ORS petition seeks clarity on whether the Company is permitted to continue to defer ongoing costs associated with AMI meters installed after December 31, 2018. The Commission approved the establishment of this deferral in Docket No. 2018-205-E, Order No. 2018-553 (2018). The Company's support for the continuation of the deferral is identical to the support the Commission found persuasive (and the ORS did not find objectionable) when it approved the Company's petition to establish the deferral. Namely, without the accounting treatment requested by the Company, the Company's earnings will be impacted every time a meter is installed as it creates an instant degradation to the Company's financials by not providing an opportunity to recover its time value of money. This deferral will allow the Company to bridge the timing gap until the Company's next rate case while continuing to install technology that will it to offer new programs, products and services to customers that are not achievable through existing meters. Additionally, contrary to the ORS' position, the Company believes a targeted program to deploy AMI infrastructure throughout the Company's service territory, including the replacement of almost its entire meter base with new, technologically superior meters that pave the way for programs allowing customers to stay better informed during outages, control their due dates, avoid deposits, be reconnected faster and better understand and take control of their energy usage is, by very definition, extraordinary.

II. SCEUC PETITION FOR RECONSIDERATION

The SCEUC Petition requests reconsideration of the rulings in Order No. 2019-341 on the recovery by DE Progress of its costs of remediation of coal ash at its H.B. Robinson generating station and the approval by the Commission of the pricing mechanism used in the Company's Real Time Pricing tariff. This response will explain why the SCEUC position on those issues should be rejected, and the Company has provided proposed findings of fact and conclusions of law in particular for the coal ash arguments.

A. <u>Robinson Coal Ash Remediation Costs</u>

Findings of Fact (Robinson Coal Ash Remediation Costs)

1. On July 15, 2015, the Company entered into a consent agreement with the South Carolina Department of Health and Environmental Control ("SCDHEC") which required excavation of an inactive coal ash storage unit at the Robinson Steam Station ("Robinson"). *See* Consent Agreement, *In re: Duke Energy Progress, Inc. H.B. Robinson Steam Electric Plan Darlington County*, Docket No. 15-23-HW (July 15, 2015) (the "Consent Agreement" or the "Agreement").

2. As recited in the text of the agreement, SCDHEC entered into the Consent Agreement pursuant to its authority under the South Carolina Hazardous Waste Management Act, S.C. Code. Ann § 44-56-10, *et seq.*, the Pollution Control Act, S.C. Code Ann. § 48-1-10 *et seq.*, and the South Carolina Solid Waste Policy and Management Act. S.C. Code Ann. §44-96-10, *et seq.* Each of the cited laws authorize SCDHEC to issue orders, assess civil penalties, conduct studies, investigation, and research to abate, control, and prevent pollution and to protect the health of persons and/or the environment.

3. Prior to execution of the Consent Agreement, other electric utilities in South Carolina had agreed to excavate the vast majority of their coal ash units, so the Consent Agreement was consistent with actions already being taken in the State to remediate coal ash and largely viewed as a positive step toward addressing the State's coal ash impoundments.

4. Since executing the Consent Agreement, SCDHEC has approved excavation plans for Ash Basin and inactive coal ash storage unit at the Robinson facility, and DEP has begun

implementing those plans in order to comply with the terms of the CCR Rule and Consent Agreement.

5. Accordingly, the Company requested and the Commission granted recovery of the shared costs incurred to comply with the Consent Agreement, $11.5 million of which was allocated to South Carolina customers.

6. SCEUC now challenges the Commission's decision on the grounds that SCDHEC lacked the authority to require excavation of certain units at Robinson and therefore lacked authority to enter into the Consent Agreement. Its argument, however, is lacking on a number of grounds.

7. First, SCEUC does not suggest or provide any reasoned basis for the Commission to conclude that SCDHEC lacked authority to enter into the Consent Agreement pursuant to the statutes cited therein.

8. Second, SCEUC failed to distinguish the coal ash units at Robinson. SCEUC is wrong that the coal ash pond at Robinson were not subject to CCR rule. The Ash Basin is covered by the CCR rule and is being excavated in compliance with the CCR rule. *See* Kerin Direct T. Revised Exhibit 10. The Consent Agreement only covers the 1960 inactive ash storage area, also known as the lay-of-land area ("Lola"). SCEUC's oversimplified argument ignores this important distinction, and SCEUC has not submitted any testimony to show what portion of the overall coal ash remediation costs incurred at the Robinson facility are attributable to the LOLA only.

9. Third, S.C. Code Ann. Section 58-27-255 was enacted *after* the Consent Agreement was entered, so SCEUC's argument that the statute invalidated SCHEC's authority to enter the Agreement in 2015 is illogical. Further, SCEUC mischaracterizes the purpose of the

statute. This statute regulates the location for the final placement of CCR, not how or when existing or legacy ash storage units must be remediated.

10. Fourth, prior to the Consent Agreement, the other electric utilities in South Carolina had agreed to excavate the vast majority of their coal ash units, so the Consent Agreement was consistent with actions already being taken in the State to remediate coal ash.

11. In addition, the Consent Agreement has not been invalidated by any judicial body with authority to act in this State, and the Public Service Commission does not have authority to reverse or invalidate any act of a sister regulatory body. To the contrary, if any citizen or advocacy group was an aggrieved party who wished to challenge the legality of the Consent Agreement, it could have filed a request for contested case with the Administrative Law Court. S.C. Code Ann. 1-23-310 *et seq.*

12. Finally, the North Carolina Utilities Commission has approved the Company's request to recover the shared costs from North Carolina customers that were incurred to comply with the Company's excavation obligations in South Carolina. *See* Order, Docket No. E-2, Sub 1142, p. 227 (Feb. 23, 2018).

Conclusions of Law (Robinson Coal Ash Remediation Costs)

1. The South Carolina Supreme Court has held that a utility is entitled to a presumption that its expenses are reasonable and were incurred in good faith. *Hamm v. S.C. Pub. Serv. Comm'n*, 309 S.C. 282, 286 (1992) (internal citations omitted). Other parties are therefore required to produce evidence that overcomes this presumption, as well as any evidence the utility has proffered that further substantiates its position. *See Utilities Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 110 (2011) ("[I]f an investigation initiated by ORS or by the PSC yields evidence that overcomes the presumption of reasonableness, a utility must further substantiate its claimed expenditures.").

2. SCEUC has not overcome the presumption that DEP's costs to comply with the Consent Agreement are reasonable and were incurred in good faith.

3. The Consent Agreement is valid. It was entered into pursuant to SCDHEC's authority under the South Carolina Hazardous Waste Management Act, S.C. Code. Ann § 44-56-10, *et seq.*, the Pollution Control Act, S.C. Code Ann. § 48-1-10 *et seq.*, and the South Carolina Solid Waste Policy and Management Act. S.C. Code Ann. §44-96-10, *et seq.* The cited statutes give SCDHEC the authority to regulate and require remediation of active and legacy surface impoundments, CCR landfills, and other ash storage units.

4. The Consent Agreement is consistent with the goals and policies of the State of South Carolina to protect the health of South Carolina citizens and the environment.

5. DEP is required to comply and is complying with the terms of the Consent Agreement.

6. It would be inequitable and contrary to South Carolina cost recovery standards to prohibit shared recovery of these costs—that were incurred to comply with a duly entered Consent Agreement that applies to the remediation of a South Carolina basin—from South Carolina customers when North Carolina customers are already bearing their portion of such costs.

B. Real Time Pricing Tariff.

Contrary to SCEUC's position, the Commission did not overlook SCEUC's recommendation that the hourly rate in the Company's rate schedule LGS-RTP be set at the lower of the Company's marginal cost or a wholesale market rate available at the time of the sale. Rather, by the Commission's approval of its cost allocation methodology, with stated exceptions, it chose not to adopt SCEUC's recommendation. Further, SCEUC's recommendation is inconsistent with how the Company's rate schedule was designed and intended and is unfair to the Company's other customers.

The RTP tariff is a voluntary rate option that offers large customers the opportunity to purchase incremental energy at a rate calculated based upon the Company's marginal cost of the generator that is expected to serve the next kWh of system load based upon all available generating plants.

The Company explained that the RTP rates are based on the Company's system production costs; and are not designed or intended to represent or be a proxy for wholesale market-based pricing. In other words, the RTP tariff is not intended to be a mechanism for the Company to shop the wholesale market for low cost electricity on the behalf of RTP customers and allow them to choose between the current wholesale market price and a rate based upon the Company's marginal cost to generate an additional kWh.

The Company testified that it constantly shops the wholesale market for the benefit of all of its customers and purchases wholesale power when wholesale prices are lower than the cost the Company would incur if it generated the power itself. In this way the savings resulting from the wholesale market are enjoyed by all of the Company's customers not just a select few. The Company explained that applying hourly rates that are lower than the Company's marginal system production costs would potentially result in other customers subsidizing RTP customers if the forecasted non-firm purchase wasn't available when needed or if other conditions such as transmission constraints wouldn't allow the purchase to occur.

CONCLUSION

For these reasons, the Company asserts that the Commission should reject ORS' petition for reconsideration on the Commission's determination that DE Progress provided sufficient notice it its customers about the potential rate increase notice. The Company also asserts that it is appropriate and supported by the record for the Commission to reject SCEUC's petition for rehearing or reconsideration for (1) the Commission's approval of the recovery by DE Carolinas of its costs of remediation of coal ash at its W.S. Lee generating station; and (2) the approval by the Commission of the pricing mechanism used in the Company's Real Time Pricing tariff. Finally, the Commission should clarify the Commission's decisions on the issues presented by the ORS, and issue an Order approving the Accounting Order requests included in the Company's Application in this Docket as described herein.

Dated this 12th day of June, 2019.

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